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8
9 **BEFORE THE ARIZONA STATE BOARD OF PHARMACY**

10 In the Matter of

11 **CAROL HERSEY**

12 Holder of License No. T005215
To Practice as a Pharmacy Technician in
13 the State of Arizona

Board Case No. 11-0001-PHR

**CONSENT AGREEMENT
AND ORDER FOR SURRENDER**

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15 In the interest of a prompt and judicious settlement of this case, consistent with the
16 public interest, statutory requirements and the responsibilities of the Arizona State Board
17 of Pharmacy ("Board") under A.R.S. § 32-1901, *et. seq.*, Carol Hersey ("Respondent"),
18 holder of Pharmacy Technician License Number T005215 in the State of Arizona, and
19 the Board enter into the following Recitals, Findings of Fact, Conclusions of Law and
20 Order ("Consent Agreement") as a final disposition of this matter.

21 **RECITALS**

22 1. Respondent has read and understands this Consent Agreement and has had
23 the opportunity to discuss this Consent Agreement with an attorney, or has waived the
24 opportunity to discuss this Consent Agreement with an attorney.
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1 2. Respondent understands that she has a right to a public administrative
2 hearing concerning the above-captioned matter, at which hearing she could present
3 evidence and cross examine witnesses. By entering into this Consent Agreement,
4 Respondent knowingly and voluntarily relinquishes all right to such an administrative
5 hearing, as well as rights of rehearing, review, reconsideration, appeal, judicial review or
6 any other administrative and/or judicial action, concerning the matters set forth herein.

7 3. Respondent affirmatively agrees that this Consent Agreement shall be
8 irrevocable.

9 4. Respondent understands that this Consent Agreement or any part of the
10 agreement may be considered in any future disciplinary action by the Board against her.

11 5. Respondent understands this Consent Agreement deals with Board
12 Complaint No. 3794 involving allegations of unprofessional conduct against Respondent.
13 The investigation into these allegations against Respondent shall be concluded upon the
14 Board's adoption of this Consent Agreement.

15 6. Respondent understands that this Consent Agreement does not constitute a
16 dismissal or resolution of any other matters currently pending before the Board, if any,
17 and does not constitute any waiver, express or implied, of the Board's statutory authority
18 or jurisdiction regarding any other pending or future investigation, action or proceeding.

19 7. Respondent also understands that acceptance of this Consent Agreement
20 does not preclude any other agency, subdivision, or officer of this State from instituting
21 any other civil or criminal proceedings with respect to the conduct that is the subject of
22 this Consent Agreement.

23 8. Respondent acknowledges and agrees that, upon signing this Consent
24 Agreement and returning this document to the Board's Executive Director, she may not
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1 revoke her acceptance of the Consent Agreement or make any modifications to the
2 document regardless of whether the Consent Agreement has been signed by the
3 Executive Director. Any modification to this original document is ineffective and void
4 unless mutually agreed by the parties in writing.

5 9. This Consent Agreement is subject to the approval of the Board and is
6 effective only when accepted by the Board and signed by the Executive Director. In the
7 event that the Board does not approve this Consent Agreement, it is withdrawn and shall
8 be of no evidentiary value and shall not be relied upon nor introduced in any action by
9 any party, except that the parties agree that should the Board reject this Consent
10 Agreement and this case proceeds to hearing, Respondent shall assert no claim that the
11 Board was prejudiced by its review and discussion of this document or any records
12 relating thereto.

13 10. If a court of competent jurisdiction rules that any part of this Consent
14 Agreement is void or otherwise unenforceable, the remainder of the Consent Agreement
15 shall remain in full force and effect.

16 11. Respondent understands that this Consent Agreement is a public record that
17 may be publicly disseminated as a formal action of the Board and may be reported as
18 required by law to the National Practitioner Data Bank and the Healthcare Integrity and
19 Protection Data Bank.

20 12. All admissions made by the Respondent in this Consent Agreement are
21 made solely for the final disposition of this matter, and any related administrative
22 proceedings or civil litigation involving the Board and Respondent. Therefore, any
23 admissions made by Respondent in this Consent Agreement are not intended for any
24 other use, such as in the context of another regulatory agency's proceedings, or civil or
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1 criminal proceedings, whether in the State of Arizona or in any other state or federal
2 court

3 13. Respondent agrees that the Board will adopt the following Findings of Fact,
4 Conclusions of Law and Order.

5 ACCEPTED AND AGREED BY RESPONDENT

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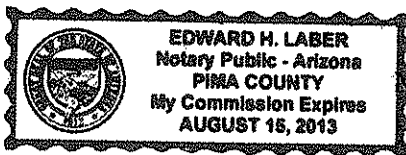
7 Carol Hersey

Dated: 7/30/10

8 Subscribed and sworn to before me in the County of Pima, State of ARIZONA,
9 this 30 day of July, 2010, by Carol Hersey.

10 

11 NOTARY PUBLIC



13 My Commission expires: 8/15/13

14 FINDINGS OF FACT

15 1. The Board is the duly constituted authority for licensing and regulating the
16 practice of pharmacy in the State of Arizona.

17 2. Respondent is the holder of license number T005215 to practice as a
18 pharmacy technician in the State of Arizona.

19 3. At all times relevant to these findings, Respondent worked as an admixture
20 technician for Arizona Oncology in Tucson, Arizona.

21 4. While employed at Arizona Oncology, Respondent forged prescriptions for
22 Percocet (oxycodone/APAP), Vicodin (hydrocodone/APAP), Xanax (alprazolam), and
23 Demerol (meperidine).

24 5. Oxycodone/APAP is a Schedule II controlled substance. A.R.S. § 36-
25 2513(A)(1)(a)(xiv).
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1 6. Meperidine is a Schedule II controlled substance. A.R.S. § 36-
2 2513(A)(2)(s).

3 7. Hydrocodone/APAP is a Schedule III controlled substance. A.R.S. § 36-
4 2514(A)(5)(d).

5 8. Alprazolam is a Schedule IV controlled substance as defined in A.R.S. §
6 36-2515(A)(2)(a).

7 **CONCLUSIONS OF LAW**

8 1. The Board possesses jurisdiction over the subject matter and over
9 Respondent pursuant to A.R.S. § 32-1901 *et seq.*

10 2. Pursuant to A.R.S. § 32-1927.01(A)(1), the Board may discipline a
11 pharmacy technician who has engaged in unprofessional conduct.

12 3. The conduct described above constitutes a violation of A.R.S. § 13-
13 3406(A)(1) (A person may not knowingly possess or use a prescription-only drug unless
14 the person obtains the prescription-only drug pursuant to a valid prescription of a licensed
15 prescriber). Furthermore, a person may not knowingly obtain or procure the
16 administration of a prescription-only drug by fraud, deceit, misrepresentation or
17 subterfuge. A.R.S. § 13-3406(A)(6). In either case, such illegal acquisition, possession
18 or procurement of a prescription-only drug is a class 1 misdemeanor. A.R.S. § 13-
19 3406(B)(1).

20 4. The conduct described above constitutes a violation of A.R.S. § 36-2531(E)
21 (A person may not knowingly or intentionally acquire or obtain possession of a
22 controlled substance by means of forgery, fraud, deception or subterfuge, including the
23 forgery or falsification of a prescription or the nondisclosure of a material fact). A person
24 who violates A.R.S. § 36-2531(E) is guilty of a class 4 felony. A.R.S. § 36-2531(E).

1 5. The conduct described above constitutes a violation of A.R.S. § 36-
2 2531(A)(1) (It is unlawful for any person who is subject to A.R.S. § 36-2521 *et seq.* to
3 intentionally or knowingly distribute or dispense a controlled substance in violation of
4 section 36-2525). A person who violates A.R.S. § 36-2531(A)(1) is guilty of a class 4
5 felony. A.R.S. § 36-2531(B).

6 6. Respondent's conduct described above constitutes a violation of A.R.S. §
7 32-1968(A) ("A prescription-only drug shall be dispensed only under one of the
8 following conditions: (1) By a medical practitioner in conformance with A.R.S. § 32-
9 1921; (2) On a written prescription order bearing the prescribing medical practitioner's
10 manual signature; (3) On an electronically transmitted prescription order containing the
11 prescribing medical practitioner's electronic or digital signature that is reduced promptly
12 to writing and filed by the pharmacist; (4) On a written prescription order generated from
13 electronic media containing the prescribing medical practitioner's electronic or manual
14 signature. A prescription order that contains only an electronic signature must be applied
15 to paper that uses security features that will ensure the prescription order is not subject to
16 any form of copying or alteration; (5) On an oral prescription order that is reduced
17 promptly to writing and filed by the pharmacist; (6) By refilling any written,
18 electronically transmitted or oral prescription order if a refill is authorized by the
19 prescriber either in the original prescription order, by an electronically transmitted refill
20 order that is documented promptly and filed by the pharmacist or by an oral refill order
21 that is documented promptly and filed by the pharmacist.").

22 7. Respondent's conduct described above constitutes a violation of A.R.S. §
23 32-1965(8) (Making or offering to make a forged, counterfeit, altered or photocopied
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1 prescription or drug order for the purpose of obtaining prescription-only or controlled
2 substance drugs).

3 8. The conduct described above constitutes unprofessional conduct pursuant
4 to A.R.S. § 32-1901.01(C)(2) ("Violating a federal or state law or administrative rule
5 relating to the manufacture or distribution of drugs or devices.").

6 9. The conduct described above constitutes unprofessional conduct pursuant
7 to A.R.S. § 32-1901.01(C)(6) ("Committing a felony, whether or not involving moral
8 turpitude, or a misdemeanor involving moral turpitude or any drug- related offense. In
9 either case, conviction by a court of competent jurisdiction or a plea of no contest is
10 conclusive evidence of the commission.").

11 10. The conduct described above constitutes unprofessional conduct pursuant
12 to A.R.S. § 32-1901.01(C)(8) ("Violating a federal or state law or administrative rule
13 relating to marijuana, prescription-only drugs, narcotics, dangerous drugs, controlled
14 substances or precursor chemicals when determined by the board or by conviction in a
15 federal or state court.").

16 **ORDER**

17 Based upon the above Findings of Fact and Conclusions of Law, Respondent
18 hereby **SURRENDERS** License No. T005215, which was issued to her to practice as a
19 pharmacy technician in the State of Arizona. The surrender of Respondent's license shall
20 be treated for all purposes, including reporting purposes, as the revocation of her license.
21 Respondent shall not reapply for licensure in the State of Arizona or petition for
22 reinstatement of her Arizona license for a period of at least five (5) years from the
23 effective date of this Consent Agreement.

1 DATED this 15th day of September, 2010.

3 ARIZONA STATE BOARD OF PHARMACY

5 (Seal)

6 By:



7 HAL WAND, R.Ph.
Executive Director

9 ORIGINAL OF THE FORGOING FILED
10 this 16 day of September, 2010, with:

11 Arizona State Board of Pharmacy
1700 West Washington, Suite 250
Phoenix, Arizona 85007

12 EXECUTED COPY OF THE FOREGOING MAILED
13 BY FIRST-CLASS and CERTIFIED MAIL
14 this 16 day of September, 2010, to:

15 Carol Hersey
4521 E. 32nd Street
Tucson, Arizona 85711

16 EXECUTED COPY OF THE FOREGOING MAILED
17 this 16 day of September, 2010, to:

18 Edward H. Laber, Esq.
33 N. Tucson Blvd.
19 Tucson, Arizona 85716-4737
Attorney for Respondent

20 Elizabeth A. Campbell
21 Assistant Attorney General
1275 W. Washington Street, CIV/LES
22 Phoenix, Arizona 85007
Attorney for the Board

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